POSSESSION—NOTICE—RECORD TITLE—DUTY OF PURCHASER.—Plaintiff and four brothers owned a tract of land as tenants in common under a deed of record. Plaintiff bought the interest of two of the co-owners, receiving warranty deeds but not recording them. Tenant lived on her three-fifths and cultivated the land. Defendant obtained judgment against one of plaintiff's grantors, levied execution on his one-fifth interest and purchased it at the sale. Plaintiff brings action to set the execution and sale aside. *Held,* she was entitled to the relief sought. *Collum* v. *Sanger Bros.* (1904), — Tex. —, 82 S. W. Rep. 459.

The court considered that the defendant was not relieved of the duty of inquiring of the person in possession notwithstanding that possession was consistent with the record title, thus reversing the decision of the civil court of appeals. *Sanger Bros.* v. *Collum,* 78 S. W. Rep. 401. The decision is contrary to the weight of authority though its doctrine is followed in *Nat. Bank* v. *Sperling,* 113 Ill. 273. It is well settled that a tenant in common has a right to occupy the whole or any part of the common property, the possession being presumed to be for the benefit of all. FREEMAN COTEN. §§ 166, 167. The doctrine is also generally accepted that the "actual, visible, notorious, continuous, and exclusive" possession of land by one rightfully there is constructive notice to subsequent purchasers or creditors of whatever estate or interest in the land is held by the occupant. JONES REAL PROP. § 1563; WADE, NOTICE, § 273; 48 Cent. Dig. 540. (Though a few states reject it. *Moore* v. *Jourdan,* 14 La. Ann. 414; *Farral* v. *Leverty,* 50 Conn. 46; *Lamb* v. *Pearce,* 113 Mass. 72.) This doctrine is qualified, however, by what Pomeroy says is a universal rule "that when a title under which the occupant holds has been put on record and his possession is consistent with that record, it shall not be constructive notice of any additional or different title or interest, to a purchaser or creditor who has relied on that record." 2 POM. EQ. § 616; *Schumacher* v. *Truman,* 134 Cal. 430; *Rogers* v. *Hussey,* 36 Ia. 664; *Wickes* v. *Lake,* 25 Wis. 71; *Mullins* v. *Hardware Co.,* 25 Mont. 525, 87 Am. St. Rep. 430, and cases cited.

PRINCIPAL AND SURETY—APPLICATION OF PAYMENTS.—A entered into a contract to install a heating plant in a school building. B became surety for payment of laborers and materialmen. C, the plaintiff, furnished a large amount of material. On two occasions A, having received installments of payment on the job, made remittances therefrom to C, with no particular directions as to application of such payments. C applied them on a former running account, and afterwards brought this action against A and B to recover for the material furnished for this contract. *Held,* that B was equitably entitled to have the payments made to C applied on the indebtedness for which he was surety. *Crane Co.* v. *Pac. Heat & Power Co. et al.* (1904), — Wash. —, 78 Pac. Rep. 460.

The holding in this case seems to be quite against the weight of authority. The rule is that where the debtor does not direct the application of a payment, the creditor may apply it as he sees fit. In the case of *Merchants Ins. Co.* v. *Herber,* 68 Minn. 420, cited by defendants as sustaining their conten-